

CALIFORNIA COASTAL COMMISSION

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W28a

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| Filed: | 10/26/2001 |
| 49th day: | 12/14/2001 |
| 180 th day: | 4/24/2001 |
| Staff: | D.Carl |
| Staff report prepared: | 10/31/2001 |
| Hearing date: | 11/14/2001 |
| Hearing item number: | W28a |

COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application number.....4-83-490-A2, Cliffs Hotel Revetment Removal and Blufftop Utilities

Applicant.....La Noria IMS, LLC (Representative: King Ventures)

Project location.....The Cliffs Hotel property at 2757 Shell Beach Road in the northern portion of the City of Pismo Beach in southern San Luis Obispo County (APN 010-041-044). The specific portion of the property involved includes the seawardmost portion of the parking lot (for the sewage lift station relocation) and the blufftop, bluff, and beach seaward of the Cliffs Hotel and Restaurant structures (for all other proposed project components).

Project description.....Removal of rock revetment at base of bluffs below the Cliffs Hotel and removal, phased (future) abandonment in place, and/or relocation of several structures in the blufftop (including sewage holding tank, sewer lift station, utility lines, pathway, and landscaping). After-the-fact recognition and phased (future) relocation of sewer collection lines.

File documents.....City of Pismo Beach certified Local Coastal Program; City of Pismo Beach permit files 96-080, 97-130, 33-CP-87, 00-0035; Coastal Commission coastal permit and appeal files 4-83-490, 4-83-490-A1, A-3-PSB-96-100, A-3-PSB-98-049, 4-83-490-A1-R, A-3-PSB-98-049-R; Coastal Commission Cease and Desist Order CCC-00-CD-04; Coastal Commission Restoration Order CCC-00-RO-01.

Staff recommendationApproval with Conditions

Summary: The Cliffs Hotel was originally approved by the Commission in 1983 with a setback from the bluff edge that was deemed at that time to be sufficient to avoid the future need for future shoreline armoring. The area seaward of the Hotel was thus deed restricted for public access and as an erodable geologic hazard area; no non-public access development was to be placed in this area. Despite this, substantial sewer and drainage facilities were installed (subsurface) in the blufftop seaward of the Hotel. Subsequently, the previous property owners (not the current Applicant) were denied shoreline armoring by the Commission in 1996, then installed such armoring anyway in 1997 (under emergency authorization from the City), and denied the installed shoreline armoring by the Commission again in 1998. The Commission issued cease and desist and restoration orders to the current Applicant in March 2000. The denied revetment has been in place since fall of 1997.



California Coastal Commission

November Meeting in Los Angeles

Staff: D.Carl Approved by:

4-83-490-A2 (Cliffs Hotel) staff report 11.14.2001.doc

The Applicant now proposes to remove the existing revetment that was denied by the Commission. The Applicant also proposes to remove an abandoned sewage holding tank in the blufftop, relocate the Hotel's sewage lift station inland of the deed restricted blufftop setback area, and to restore the bluff in this area. The Applicant also proposes to leave in place sewer collection and drainage facilities (subsurface) and the public access pathway in the blufftop setback area, and to relocate these features inland (also within the setback area) as future bluff erosion dictates following revetment removal. The Applicant also proposes to designate a "fire lane" area in the blufftop and to designate an "action line" which, if reached by bluff erosion, would trigger the need for shoreline armoring.

The applicable Coastal Act and Local Coastal Program (LCP) policies require that development be sufficiently set back away from bluff edges so as to allow for natural erosion to take place without threatening the development, and without reliance on shoreline armoring. These policies require that the setback area be preserved for conservation and public access purposes; other development is prohibited in these areas. The coastal public viewshed must be protected and enhanced. All existing public access areas (such as that found on the blufftop, beach, and ocean waters seaward of the Cliffs Hotel) are protected, and uses or development in these areas that are incompatible with the primary purpose of providing for public access and recreation are not allowed. These requirements are complemented by the property's deed restrictions seaward of the Hotel that prohibit non-public access development.

The Applicant proposes to resolve the most obvious unresolved problem at the site by removing the revetment. In addition, the Applicant proposes to remove and/or relocate outside of the blufftop setback the most problematic of the unpermitted development present there (the sewage holding tank and the lift station). Provided these components of the proposal are completed in a timely fashion and according to acceptable engineering standards, then such measures can be found consistent with the Commission's directions for this site, and consistent with the applicable LCP and Coastal Act policies.

However, these relatively straight-forward portions of the proposal are entwined with requests to retain substantive non-public access development in the blufftop, and to define through a complicated plan conceptual (fire lane and action line) and physical (sewer and drainage facilities) development that would remain in the blufftop erosion setback area. These elements of the project are inconsistent with LCP policies and the underlying geologic hazard deed restriction that prohibit non-public access development in this area, and LCP policies that require a minimum 100 year setback to, among other things, negate the need for future shoreline armoring.

Thus, the project as proposed is inconsistent with the Coastal Act and the LCP.

To maintain Coastal Act and LCP consistency and integrity, and because of the inherent dangers of development along a naturally eroding shoreline, the project can only be approved if these inconsistencies are rectified to the applicable policies. Thus, special conditions are identified to ensure that: the development proposed within the blufftop setback area (i.e., the sewer lines, drainage system, pathway, and landscaping) and the relocated inland sewage lift station will not be used as justification for future shoreline armoring requests; any and all debris from the blufftop that falls to the beach below (e.g., abandoned sewer lines) and/or that daylight in the bluff and creates a public safety nuisance or visual blight must be retrieved and properly disposed; the blufftop may be used for emergency access, but the



proposed “fire lane” area is not recognized; the “action line” enjoys no status under the Coastal Act nor the LCP and is not recognized; impacts to public access from construction are to be mitigated by an easement for lateral access upcoast; and finally, the Applicant must assume all risks for developing in light of the known hazards present at this location.

As so conditioned, Staff recommends approval.

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I. Staff Recommendation on CDP Amendment Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Amendment Number 4-83-490-A2 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit Amendment. The Commission hereby approves the coastal development permit amendment on the grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act and, as appropriate, the certified City of Pismo Beach Local Coastal Program. Approval of the coastal development permit amendment complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Removal of Revetment, Sewage Holding Tank, and Sewage Lift Station.** The removal of the rock revetment located on the beach and bluffs seaward of the Cliffs Hotel and the restoration of the bluff and beach in this area; the removal of the sewage holding tank located in the bluff seaward of the Cliffs Hotel and the restoration of the blufftop in this area; and the removal of the sewage lift station located in the bluff seaward of the Cliffs Hotel and the restoration of the blufftop in this area, shall be completed according to the methodology identified for these tasks as specified in the proposed Facility Relocation Plan (*Facility Relocation Plan for the Cliffs Hotel and Restaurant* dated June 25, 2001) as refined by the methodology identified for these tasks by GeoSolutions Inc. in letter reports dated June 7, 2001, August 8, 2001, and August 11, 2001. These removal and restoration events shall be completed in their entirety as soon as possible, and in no case later than October 1, 2002.
2. **Blufftop Development Stipulations.** By acceptance of this permit amendment, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that:
 - (a) **No Armoring For Blufftop Development or Sewage Lift Station.** No bluff or shoreline protective device(s) shall be constructed for the purpose of protecting any development (including but not limited to pathways, sewer lines, dewatering wells, drainage pipes, fences, landscaping, and electrical utilities) located in the blufftop area seaward of the Cliffs Hotel or the sewage lift station (see exhibit G on page 63 of the exhibits for a graphic showing the location of the “blufftop area” and the “sewage lift station”) in the event that these developments are threatened with imminent damage or destruction from waves, erosion, storm conditions, landslides, bluff retreat or other natural hazards in the future. The Permittee hereby waives, on behalf of itself and any successors and assigns, any rights that may exist under Public Resources Code Section 30235 or City of Pismo Beach Local Coastal Program Land Use Policy S-6 and Zoning Sections 17.078.060 and 18.16.100 to construct bluff or shoreline protective device(s) to protect any development located in the blufftop area seaward of the Cliffs Hotel or the sewage lift station.
 - (b) **Daylighting Development in the Bluff.** If any development located in the blufftop area seaward of the Cliffs Hotel, including but not limited to subsurface developments, or any component of the sewage lift station protrude seaward from the bluffs seaward of the Cliffs Hotel and these developments are determined to be a public safety hazard, visual blight, and/or a nuisance by the appropriate City of Pismo Beach official or the Executive Director, then the Permittee shall immediately remove all portions of such developments that are deemed necessary to protect public safety and/or the public viewshed by the City of Pismo Beach official or the Executive Director.
 - (c) **Debris Removal.** The Permittee shall immediately remove all debris, including but not limited to that emanating from abandoned developments in the blufftop, that may fall from the blufftop area



seaward of the Cliffs Hotel to the beach below.

The Blufftop Development Stipulations shall affect the entire area seaward of the Cliffs Hotel and the sewage lift station area (see exhibit G on page 63 of the exhibits).

3. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit amendment, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (a) that the site is subject to hazards from episodic and long-term bluff retreat and coastal erosion; (b) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (e) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.

The Assumption of Risk, Waiver of Liability and Indemnity Agreement shall affect the entire Cliffs Hotel parcel (APN 010-041-044).

4. **Revised Geologic Hazard Deed Restriction.** The existing Geologic Hazard Deed Restrictions shall be combined into one deed restriction to be recorded on the Cliffs Hotel parcel (APN 010-041-044). This combined Geologic Hazard Deed Restriction shall include the same provisions as currently identified in the existing Geologic Hazard Deed Restrictions with the exception that Section VIII subsection (a) shall specify that, in addition to the already stated pathways and stairways, subsurface drainage and sewer utilities may also be allowed within the identified 100 foot setback provided that any such development shall not constitute existing structures within the meaning of Public Resources Code Section 30235 or City of Pismo Beach Local Coastal Program Land Use Policy S-6 and Zoning Sections 17.078.060 and 18.16.100.
5. **Revised Public Access Deed Restriction.** The existing Public Access Deed Restrictions shall be combined into one deed restriction to be recorded on the Cliffs Hotel parcel (APN 010-041-044).
6. **Combined Deed Restriction.** PRIOR TO JANUARY 1, 2002, the Permittee shall execute and record a combined deed restriction, in a form and content acceptable to the Executive Director incorporating all of the terms of special conditions 2, 3, 4, and 5 above. The combined deed restriction (Deed Restriction) shall affect the entire Cliffs Hotel parcel (APN 010-041-044) and shall include a legal description and a site plan of each of the following areas: (1) the Blufftop Development Stipulations area per special condition 2; (2) the Assumption of Risk, Waiver of Liability and Indemnity Agreement area per special condition 3; (3) the Geologic Hazard Deed Restriction area per special condition 4; (4) the Public Access Deed Restriction area per special condition 5; and (5) the Permittee's entire parcel (APN 010-041-044). The Deed Restriction shall include a combined site plan that includes a graphic demarcation of each of the above 5 areas on one site plan. The Deed



Restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This Deed Restriction shall not be removed or changed without a Commission amendment to coastal development permit 4-83-490.

7. **Public Access OTD.** PRIOR TO JANUARY 1, 2002, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director a permanent public easement for public pedestrian access and passive recreational use that applies to the approximately 2,500 square foot triangular area north of the existing public access beach stairway more specifically depicted on exhibit H. The recorded document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall include legal descriptions of both the Permittee's entire parcel and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.
8. **Revised Project Plans.** PRIOR TO JANUARY 1, 2002, the Permittee shall submit Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Coastal Commission as Figures 1 through 6 of the proposed Facility Relocation Plan (*Facility Relocation Plan for the Cliffs Hotel and Restaurant* dated June 25, 2001) but shall show the following changes to the project:
 - (a) **Facility Relocation Plan.** The Facility Relocation Plan shall be eliminated, except for Figures 1 through 6 and except as directed by the remainder of this condition.
 - (b) **Phasing.** All phasing shall be according to Table 1 on Page 19 of the proposed Facility Relocation Plan, shall be clearly defined in terms of the conditions that initiate commencement of each phase, and shall be described in plan notes and/or accompanying narrative. At a minimum, the Revised Project Plans shall include a site plan and representative cross sections that show each phase.
 - (c) **Site Plans and Cross Sections.** All Revised Project Plans site plans and cross sections shall at a minimum illustrate Cliffs Hotel structures (including but not limited to Hotel building, Restaurant building, pool, patio, stairs, parking lots, sewer lines, drainage lines, pathways, and sewage lift station), blufftop edge, base of bluff sand-bluff interface, and all property lines in both site plan and cross section views.
 - (d) **Fire Lane.** The "Fire Lane" notation shall be eliminated from the Revised Project Plans. Plan notes may indicate that the blufftop seaward of the Cliffs Hotel is available for emergency access response, but the plans shall not demarcate a formal area for this purpose.
 - (e) **Action Line.** The "Action Line" notation shall be eliminated from the Revised Project Plans.



- (f) **Native Blufftop Plantings.** The Revised Project Plans shall indicate via plan notes that all native blufftop plantings shall be drought and salt tolerant native species consistent with bluff vegetation indigenous to the Pismo Beach area, and that these native species shall be maintained in good growing condition in all areas seaward of the any public access pathways at all times.
- (g) **Landscaping.** The Revised Project Plans shall indicate via plan notes that all blufftop landscaping, including but not limited to the native blufftop plantings, shall be maintained in good growing condition at all times and shall be replaced as necessary with new plant materials to maintain the approved blufftop landscaping configuration.
- (h) **Fencing.** A fencing detail shall be provided that specifies the type, configuration and location of all fencing proposed in the blufftop. All such fencing shall be see-through to the extent feasible (e.g., chain-link, cable, or equivalent), treated to further diminish its intrusion on the blufftop viewshed (e.g., black anodized metallic fencing or cabling), and the minimum height and bulk necessary for public safety purposes.
- (i) **Combined Deed Restriction and OTD.** The restrictions on the Cliffs Hotel property (APN 010-041-044) pursuant to the Combined Deed Restriction required by special condition 6 shall be included as plan notes on a separate plan sheet that shows the combined site plan (demarcating each of the deed restriction areas) required by special condition 6. On the same plan sheet, the public access offer to dedicate easement required by special condition 7 shall also be included as plan notes and the offer to dedicate easement area shall be demarcated on the plan sheet. At a minimum, all Cliffs Hotel structures (including but not limited to Hotel building, Restaurant building, pool, patio, stairs, parking lots, sewer lines, drainage lines, pathways, and sewage lift station), blufftop edge, base of bluff sand-bluff interface, and all property lines shall be shown on the plan sheet.

The Revised Project Plans shall be submitted with evidence of review and approval by the appropriate City of Pismo Beach official.

The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to coastal development permit 4-83-490 unless the Executive Director determines that no amendment is necessary.

- 9. **Previous Conditions.** Special conditions 2 and 3 of coastal development permit amendment 4-83-490-A1 are replaced by special condition 8 above. All other previous conditions of approval associated with coastal development permit 4-83-490 and coastal development permit amendment 4-83-490-A1 remain in full force and effect.
- 10. **Enforcement.** Failure to comply with the conditions of this approval shall result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.



III. Findings and Declarations

The Commission finds and declares as follows:

A. Property Location and Description

The Cliffs Hotel is sited on an approximately 6 acre parcel located between Shell Beach Road and the Pacific Ocean immediately west of State Highway 101 in north Pismo Beach.¹ There is a steep arroyo on the north side of the property, to the south is a vacant parcel, and to the west is the Pacific Ocean. Cliffs Hotel and restaurant is located on top of an approximately 80 foot high bluff. At the base of the bluff is a narrow stretch of pocket beach, which is part of Shell Beach. At the northern property line, a stairway along the edge of the steep arroyo provides access to the beach from pathways originating at Shell Beach Road and along the blufftop itself. The area offshore of the northern portion of the subject property is the site of a well-known reef-based surfing area, commonly known as “Reefs Right.” It is also known as “Palisades” or “The Cliffs.” “Finger Jetty,” another surfing area, is located offshore near the southern property boundary. See exhibits A and B.

B. Background of Original CDP Approval and Subsequent Actions

The Cliffs Hotel and Restaurant complex (hereafter Cliffs Hotel or Hotel) was originally approved by the Coastal Commission on October 13, 1983.² The Cliffs Hotel development consists of a 4-story, 170 unit hotel building and a separate smaller building housing a 250 seat restaurant and conference facility between which is a courtyard area with a swimming pool; a parking lot fills the area between the hotel and restaurant buildings and inland Shell Beach Road. The Cliffs Hotel is perched on top of a near vertical bluff, approximately 80 feet high, on the northern Pismo Beach bluffs. Fronting the bluffs is a narrow stretch of beach which opens up to a larger pocket beach, approximately 450 feet long and about 75 feet wide. Both the bluffs and the beach area seaward of the hotel were secured exclusively for public coastal access by recorded property restrictions as part of the original 1983 approval.³ Because of the known erosion and bluff retreat hazard at this location, this original approval also required the Cliffs Hotel to be set back 100 feet from the bluff edge. With this setback, the Commission found that after 100 years of erosion, there would still be approximately 75 feet of blufftop between the proposed hotel structures and the bluff edge. The Commission further found that shoreline protective devices would not be required to protect the Cliffs Hotel in the future. In fact, the 100-foot setback area was deemed adequate by the Commission and the Applicant to allow for natural retreat processes to continue without reaching the structures on the site for 400 years. By recorded deed restriction, the property owners assumed liability for knowingly developing on a parcel subject to extraordinary hazard from erosion and bluff

¹ APN 010-041-044. Note that the Applicant also owns the smaller parcel (roughly ¼ acre) located between Shell Beach Road and State Highway 101 (APN 010-041-043).

² CDP 4-83-490.

³ See “Existing Deed Restrictions” section of this report below.



retreat.⁴

Subsequently, in December 1996, the Coastal Commission denied, on appeal from a City of Pismo Beach approval decision, a coastal development permit request for concrete and pile upper bluff stabilization, modified surface/underground drainage system, and a rock rip-rap revetment designed to thwart further bluff retreat at the site.⁵ This 1996 project was denied in part because the proposed armoring was designed to protect an unpermitted sewage holding tank in the 100-foot (non-developable) setback area (contrary to the Commission's original approval and contrary to the recorded property restrictions),⁶ and in part because the Commission determined that less environmentally damaging alternatives had not been considered, and that the project likewise did not consider or mitigate impacts to shoreline processes, sand supply, and the public viewshed.

Shortly thereafter, in August 1997, citing new geotechnical information, potential public safety issues, and the length of the regular permit processing time frame in relation to upcoming El Niño storms, the City of Pismo Beach issued an emergency permit for a rock rip-rap revetment in the same location denied by the Commission 8 months prior. Commission staff expressed concern to the property owners and City at that time that allowing such development under emergency procedures, procedures that do not allow for appeal of emergency authorizations, when a similar project had just been denied after intensive review was problematic. As highlighted for the Applicant and City by Commission staff at the time, the City's emergency authorization allowed for the placement of temporary measures only; if, after a public hearing, this temporary shoreline protective device were denied, the revetment would have to be removed. After the revetment was fully installed, the City approved a regular coastal permit authorizing the revetment. The City's approval was subsequently appealed to the Commission.⁷ Because of the Commission's original approval of the project, the Commission simultaneously reviewed the appealed project as an amendment to the original Cliffs Hotel approval.⁸

After public hearings, the Coastal Commission found that: (1) the property's deed restrictions (recorded pursuant to the Commission's original approval) did not allow a revetment; (2) the Cliffs Hotel structures were located between 78 and 130 feet from the bluff edge and, as a result, were not at that time in danger from erosion; based upon the erosion rate at the site, approximately 50 feet of blufftop setback would remain after another 7 years of erosion at the site; (3) there were a range of upper bluff dewatering measures available to help reduce potential future threats; (4) even were the structures to have been in danger, and were a revetment required to protect these structures (tests that must be met pursuant to the City's LCP and the Coastal Act), the revetment project: (a) did not mitigate its negative public access impacts (approximately 4,900 square feet of beach covered with rocks blocking useable beach area and blocking pedestrian access along the beach; impacts on the surfing break including decreased surfer safety due to rocks in the entry/exit zone); (b) did not mitigate its negative impacts on sand supply (the revetment

⁴ Again, see "Existing Deed Restrictions" section.

⁵ Appeal Number A-3-PSB-96-100. Note that by this time the original developers, Stephen Cox and Joseph Wade, had sold the property to Tokyo Masuiwaya Corporation (acquired April 4, 1989).

⁶ Subject of Coastal Act Violation Number V-3-96-003.

⁷ Appeal Number A-3-PSB-98-049; appellants Commissioners Areias and Nava, the Surfrider Foundation, and local citizen Bruce McFarlan.

⁸ Amendment Number 4-83-490-A1.



would reduce the volume of sand supplied to the beach at this location by 7,149 cubic yards the first year and 2,249 cubic yards every year thereafter); (c) was not designed to minimize public viewshed impacts in a scenic recreational area; (d) was not designed to assure structural stability (revetment was not keyed into hard materials but rather placed on top of the beach; lacked a long term maintenance program); (e) was not designed to respect the natural bluff landform. The Commission further found that even if a shoreline protective device had been shown to be necessary to protect existing structures in danger, consistent with the parameters of the Coastal Act and of the City's LCP, the preferred shoreline alternative at this site would be a vertical seawall that could be contoured, colorized, textured and rilled to match the existing bluff at this location.

Based upon these findings, on November 5, 1998, the Commission denied the proposed revetment and approved a comprehensive set of blufftop dewatering elements. Subsequently, the then Cliffs Hotel owners asked the Commission to reconsider these decisions based upon additional information that had been developed by the Cliffs Hotel's engineers. On February 3, 1999, the Commission denied the reconsideration requests, finding that the additional information cited did not constitute relevant new information that would alter the Commission's original decision on the project.⁹ The property was then sold to the current owners of the property.¹⁰

After a failed series of attempts at an administrative solution to the issues of unpermitted development, including the denied revetment and the blufftop utilities placed in violation of the original permit, the Commission on March 16, 2000 adopted cease and desist and restoration orders requiring the Applicant to apply for CDPs to remove the revetment, to retain and/or remove blufftop structures placed inconsistent with the original approval, and to comply with all other approved conditions of approval.¹¹ The Applicant filed litigation in San Luis Obispo Superior Court challenging the permit decisions and the cease and desist order. In July 2001, in a ruling that has now become final, the court upheld the Commission's decisions and the order.

The Applicant then proceeded to develop plans to remove the subject revetment and to bring the project into coastal permit compliance. This application is the culmination of that effort.

C. Proposed Amendment Project

The Applicant has submitted a "Facility Relocation Plan" as the proposed project description (hereafter, "proposed project;" see exhibit D for the "Facility Relocation Plan" submitted). In sum, the proposed project is to: (1) remove the existing revetment and restore the bluff and beach to their original configuration; (2) remove the abandoned sewage holding tank and restore the bluff to its original configuration; (3) relocate the sewage lift station to a location inland of the original 100 foot setback; (4) modify the previous requirement for an impermeable geomembrane under any turf areas to instead use a subsurface irrigation system; (5) identify a conceptual "fire lane" area seaward of the Cliffs Hotel; (6)

⁹ Reconsideration requests 4-83-490-A1-R and A-3-PSB-98-049-R.

¹⁰ The current owners of the property, and the applicant for the current application, La Noria IMS, LLC, acquired the property in June 1999.

¹¹ Cease and Desist Order CCC-00-CD-04 and Restoration Order CCC-00-RO-01.



identify a conceptual “action line” on the blufftop designed to be an indicator for when shoreline armoring might be pursued in the future; and (7) relocate (in phases) other structures (i.e., storm drain lines, sewer lines, pathway, drainage facilities, electrical connections, fencing, etc.) located within the blufftop seaward of the Cliffs Hotel as future erosion dictates.¹²

This submitted plan has its genesis in the previous partial approval by the Commission in 1998 in which a required condition was for the submittal of a “Facility Relocation Plan;”¹³ special condition 2 of 4-83-490-A1 states as follows:

Facility Relocation Plan. WITHIN 60 DAYS OF THE COMMISSION’S ACTION ON THIS PERMIT AMENDMENT REQUEST, the permittee shall submit to the Executive Director for review and approval a plan for progressively relocating and/or removing all development authorized by this permit amendment under Special Condition 1 commensurate with actual or expected shoreline erosion in advance of the retreat of the bluff. For each type of facility, the plan shall: identify the existing location; specify (in terms of remaining distance from the bluff edge) when the removal or relocation shall occur; where (on the site plan) the new facility location will be; and how the old facility components will be disposed of or preferably reused. The plan may provide for more than one relocation event for any particular facility. However, facilities shall be removed or relocated prior to the time when such removal or relocation would destabilize the bluff or exacerbate bluff retreat. It is recognized that while certain essential facilities may from time to time need to be relocated landward, they must unavoidably remain located seaward of the permitted hotel and restaurant buildings in order to function (e.g., the blufftop lateral access path and the bluff sediment dewatering system); accordingly, the plan shall also specify the maximum feasible landward alignment for each of these essential facilities. The plan shall specify that no man-made materials or excavation spoils will be allowed to fall over the bluff edge, and any man-made materials which do find their way over the edge will be immediately retrieved. PRIOR TO INSTALLATION OF ANY RELOCATED FACILITY, specific construction plans shall be submitted for review and approval by the Executive Director; such plans shall be submitted with evidence of review and approval by the City of Pismo Beach. If, upon review of any construction plans so submitted, the Executive Director determines that an amendment to Coastal Development Permit 4-83-490 is necessary to authorize the development described by the submitted plans, the permittee shall submit an amendment request upon notification of this determination.

The intent of the original ‘relocation plan’ required in 1998 was that it be developed to address the

¹² Note that the Facility Relocation Plan also includes measures to be taken by the Applicant to achieve condition compliance with the original CDP requirements related to public access parking and signage. These elements are being addressed separately by Commission staff in their condition compliance role. See also section on Condition Compliance at the end of this report.

¹³ Note that the current submittal is the first such plan received notwithstanding the requirement that it be submitted within 60 days of the Commission’s action on the previous permit amendment request (i.e., it was to be submitted by January 4, 1999).



elements in the blufftop that were approved by the Commission at that time.¹⁴

Thus, the current application is to remove the revetment previously denied by the Commission, and to modify the originally approved CDP to allow for a variety of structures in the blufftop setback area that was previously deemed appropriate only for public access-related structures. In addition, two conceptual measures are being applied for here: a 24 foot wide emergency fire lane area and the aforementioned “action line.” These proposed developments have been placed within the context of a “facility relocation plan.”

The revetment would be removed in the same way it was installed; namely by crane placed atop the bluff seaward of the hotel. A backhoe/loader would be lowered to the beach to position the boulders for the crane, the crane would then lift the rock to the blufftop where it would be loaded into trucks for removal. The final disposal location has not yet been determined.¹⁵ The Applicant estimates that roughly 5,000 tons of rock, an estimated 1,500 individual stones, would be removed in this way. The Applicant estimates 4 weeks would be required for rock removal, and an additional 2 weeks necessary for restoration of the bluffs. The Applicant indicates that, barring unforeseen weather/storm difficulties, the work would commence this year immediately following Commission approval. If it is too late in the storm season, or if the project must be halted midway, the work would (re)commence next year following the culmination of the rainy season.

As to the blufftop structures proposed, these need to be understood as those that have been approved by the Commission previously (in 4-83-490-A1) versus those that would be retained or removed under this proposal. Previously approved structures in the blufftop consist of: the blufftop concrete path/swale with black anodized chain link fence; three dewatering wells with underground electrical connection; one sump pump and pit with underground electrical connection; the storm drain line and drop inlet; an irrigation system with moisture sensing controls; and drought and salt tolerant native blufftop landscaping. All other existing structures located in the blufftop seaward of the hotel have not yet been permitted by the Commission. Therefore, any such existing structures that would remain as shown in the proposed project (i.e., those structures that would not be removed as described below) are proposed for after-the-fact approval of their installation. The currently existing (but not yet permitted) structures that would remain in the blufftop as proposed consist of the existing sewer line and sewer manhole (see also lift station discussion below), and the 7 existing dewatering wells installed in addition to the 3 previously permitted.

¹⁴ Special Condition 1 of 4-83-490-A1 describes the previously approved project as follows: “As shown on the Applicant’s submitted plans and as modified by the conditions below, this Coastal Development Permit Amendment authorizes only: the installation of three dewatering wells with underground electrical connection; a sump pump and pit with underground electrical connection; a blufftop concrete path/swale with black anodized chain link fence no higher than four feet; a storm drain drop inlet; an irrigation system with moisture sensing controls; an impermeable geomembrane under any turf areas consistent with the landscape irrigation control recommendation of the Geologic Bluff Study by Earth Systems Consultants dated January 30, 1996; drought and salt tolerant native blufftop landscaping; and the existing storm drain location. This approval does not include construction of the rock rip-rap revetment. Any other development will require a separate coastal permit or a separate amendment to Coastal Development Permit 4-83-490.”

¹⁵ The Applicant is not applying for disposal of the rocks, and in no way is the Commission reviewing the ultimate disposal of the rocks in this amendment application. The disposal of the rock would be subject to whatever permitting was necessary depending on the final location chosen by the Applicant. If it is a location within the coastal zone, the Applicant will need a separate coastal development permit or its equivalent issued by the Commission and/or the local government involved should there be a certified LCP.



The abandoned sewage holding tank (located roughly 10 feet below the bluff surface and measuring roughly 33' x 8' x 8') would be immediately removed and the resultant "hole" filled with soil having the same permeability and strength as the native surrounding soils. There has been some debate over whether it would be more protective of the bluff resources to leave the sewer holding tank in place and remove it in the future when and if it "daylights" in the bluff. The Applicant's geotechnical consultants indicate such removal in the future would be expected to exacerbate bluff erosion since it would likely take place during uncontrolled circumstances when the structure daylights. During such a time (for example, during a winter storm), removal of the tank could result in large-scale bluff failure. Removal of the tank now, when it can be done in a controlled manner and appropriately backfilled, would be more protective of the restored natural bluff.

The sewage lift station would likewise be immediately removed from the bluff area seaward of the Hotel and relocated to a location under the existing parking lot inland of the previously required bluff setback (see exhibits B and G). Coinciding with the relocation, approximately 50' of new sewer collection line would be installed to connect the existing sewer line to the relocated lift station. Since the existing sewer line in the blufftop has not yet been permitted, the proposed project would be for after-the-fact approval of the existing sewer line installation. When the bluff erodes to within 6 feet of the existing line, a new sewer line would be installed in the blufftop roughly 15 feet seaward of the hotel; the existing line would then be abandoned in place.

As the bluff erodes following the removal of the revetment, the proposed project provides that the blufftop improvements would be relocated inland in phases in advance of the bluff's retreat.

See exhibit D for the proposed "Facility Relocation Plan" and exhibit B for proposed site plan.

D. Existing Deed Restrictions

The Commission's original approval of the Cliffs Hotel in 1983 required that the Hotel be sited 100 feet back from the bluff edge and that the area seaward of the Cliffs Hotel be deed restricted for public access and geologic hazard setback purposes. The Commission found at that time that shoreline protective devices would not be required to protect the Cliffs Hotel in the future and that the required public access area would be protected. The Commission found as follows:

The Commission finds that the proposed project, as conditioned, is consistent with PRC Section 302[5]3 (1 & 2) and will assure structural stability and structural integrity and neither create or significantly contribute to erosion, geologic instability, or destruction of the site or surrounding area, nor require the construction of bluff or cliff protective devices (seawalls, etc.)

The 100 foot setback proposed in the plans as submitted...should be sufficient to protect [the blufftop] accessway from erosion for 100 years.

To implement these findings, the original Cliffs Hotel developers were required to record a deed restriction designed to ensure the project's consistency with Coastal Act Section 30253 over the course of



its lifetime. This deed restriction states:

The undersigned Owners, for themselves and for their heirs, assigns, and successors in interest, covenant and agree: (a) that no development other than pathways and stairways shall occur within the 100 foot setback portion of the Subject Property shown and described on Exhibit B attached hereto and incorporated herein by reference; (b) that the Applicants understand that the portion of the Subject Property described on Exhibit A is subject to extraordinary hazard from erosion and from bluff retreat and that the Applicants assume any liability from these hazards which may result to the California Coastal Commission from its granting of Permit No. 4-83-490; (c) the Applicants unconditionally waive any claim of liability on the part of the California Coastal Commission for any damage from such hazards; and (d) the Applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion or landslides.

This deed restriction, in which the property owner assumes the risk for building along an eroding coastline, is supplemented by a second, and complementary, deed restriction also required as a condition of the Commission's original approval. This second property restriction states, in applicable part:

[N]o grading, landscaping, or structural improvements that in the opinion of the Executive Director of the California Coastal Commission, or his successor, would impede public access, other than public walkways and stairways, shall be constructed on the Subject Property.

Thus, the first deed restriction is for geologic hazards and waiver of liability, and the second is for ensuring that public access would be permitted on the site.¹⁶ Although the current Applicant was not the original Cliffs Hotel developer, the current Applicant knowingly and voluntarily accepted the property restrictions when the property was purchased.

The access deed restriction covers the area between the oceanside elevation of the Cliffs Hotel and the seaward property line (see exhibit C for deed restricted area). An exhibit attached to the deed restriction when it was recorded in 1984 shows the deed restricted area to be about 200 feet in length (as measured from the Hotel towards the ocean), and evenly divided between bluff top and beach portions. These proportions have now changed as portion of the blufftop land have eroded. The deed restriction limits development to access pathways/stairways and any other grading, landscaping or structural improvements that, in the opinion of the Executive Director, would not impede public access. Thus, under the terms of the deed restriction, before any development can occur in the deed restricted access area, the Executive Director must be consulted and find that the proposed development will not impede public access. If the Executive Director determines that the proposed development will impede access, then the project cannot go forward unless the deed restriction is amended to allow the development. The deed restriction can only be amended by submitting a request for such a change to the Coastal Commission.

¹⁶ Note that there are actually four deed restrictions, two each for public access and geologic hazards. The reason for this is because there were two properties at the time the deed restrictions were recorded. The two properties have since been combined into one parcel (APN 010-041-044). In any case, the respective property restrictions (e.g., for access and geologic hazards) are the same between the applicable deed restrictions and together cover the area seaward of the Cliffs Hotel on current APN 010-041-044.



The deed restriction for geologic hazard setback and waiver of liability flatly precludes any development within 100 feet of the Hotel (as measured towards the ocean) other than “pathways and stairways” (see exhibit C for deed restricted area). This other deed restriction on the property provides for a geologic setback, places future owners on notice regarding dangers associated with the site (eroding bluffs), and places the assumption of risks involved in building and maintaining structures on the site on the property owner. The geologic setback area runs the width of the site and extends out 100’ from the Cliffs Hotel to what was, at the time the deed restriction was recorded, the edge of the bluff.

Thus, the deed restricted geologic hazard setback area and the blufftop portion of the deed restricted public access area occupy the same physical space on the site (i.e., the blufftop seaward of the Hotel). This is relevant because the deed restrictions do not contain equivalent limitations on new development. As discussed above, the access deed restriction allows new grading, landscaping and other structural improvements if the Executive Director determines that the proposed development will not impede public access (and of course, if the proper permits are obtained). The geologic hazard deed restriction does not allow any development within the setback area except “pathways and stairways;” there are no provisions for any other future improvements in the document.

The sum effect of these property restrictions (in terms of how the land can be developed) is that the entire area between the Cliffs Hotel and the Pacific Ocean is restricted to appropriate public access uses. The deed restriction for geologic hazard setback and waiver of liability flatly precludes any development within 100 feet of the Hotel other than “pathways and stairways.” The deed restriction for public access implies a potential for additional development within the 100-foot geologic hazard deed restriction area if it will not “impede access.”¹⁷ Thus, in order to allow new development in this blufftop area, the geologic deed restriction would need to be amended and the Executive Director would need to find that the new development would not impede access.¹⁸

E. Standard of Review

Although the Cliffs Hotel was originally approved under the Coastal Act, the standard of review in this amendment is bifurcated since the City’s LCP has since been certified. The Commission retains original coastal permitting jurisdiction over that portion of the site roughly extending seaward from the toe of the original slope below the Cliffs Hotel; the standard of review in this area is the Coastal Act. Inland of that area, the applicable standard of review is the City of Pismo Beach LCP as well as the public access and recreation policies of the Coastal Act (since the project lies between the first public road and the sea). The line between the LCP versus Coastal Act policy application (and coastal permitting jurisdiction) thus appears to bisect the existing revetment.

Therefore, for the revetment removal, the standard of review is both the Coastal Act and the LCP. Since the proposal is to remove the previously denied revetment, and since the LCP and Coastal Act are both

¹⁷ Of course, the remainder of the property seaward of the 100-foot geologic hazard deed restriction area includes this same prohibition since the public access deed restriction extends to the Pacific Ocean.

¹⁸ See findings that follow for further elaboration of this issue and the associated conditions of approval necessary to resolve this component of the project.



supportive of such a project, the exact boundary need not be resolved here. As applicable, both Coastal Act and LCP policies will be cited in this context.

For all other portions of the proposed project, the standard of review is the City's LCP and the access and recreation policies of the Coastal Act.

Because the City's LCP is certified, the City would generally take the lead on processing CDPs within their jurisdiction (extending inland from the toe of the bluff slope). However, because this proposed project involves blufftop development that must be rectified to the original Cliffs Hotel CDP, the Applicant, City staff and Commission staff all agreed that the appropriate coastal permitting process in this case was for the Coastal Commission to review the requisite coastal permit amendment application. The City has already given all necessary discretionary approvals for the proposed project under their General Plan.

F. Coastal Development Permit Amendment Determination

1. Applicable Policies

Long term stability and setbacks

Section 30253 of the Coastal Act addresses the need to ensure long-term structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future:

30253: *New development shall:*

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ...*

The City of Pismo Beach LCP mirrors the Coastal Act in this regard. Specifically, LUP Policy S-3 states, in applicable part:

S-3 (Bluff Set-Backs). *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The Cliffs Hotel Site is located within the City's Hazards and Protection (H) overlay zone (IP Chapter 17.078 et seq). IP Sections 17.078.050 and 18.16.100 reiterate the 100 year setback requirement stating identically in applicable part as follows:

17.078.050 (Bluff Hazard, Erosion and Bluff Retreat Criteria and Standards) and 18.16.100 (Bluff Protection). *New structures shall be set back a sufficient distance from the bluff edge to*



be safe from the threat of bluff erosion for a minimum of 100 years. ...

IP Section 17.078.060 likewise reinforces the 100 year setback requirement stating in applicable part:

17.078.060 (Shoreline Protection Criteria and Standards). ... *New development shall not be permitted where it is determined that shoreline protection will be necessary for protection of the new structures now or in the future based on a 100 year geologic projection. ...*

Under LUP Policy S-3, IP Sections 17.078.050, 17.078.060 and 18.16.100, and Coastal Act Section 30253, new blufftop development must be setback a sufficient distance from the bluff edge to allow the natural process of erosion to occur without creating a need for a shoreline protective device. At a minimum, new development should be set back far enough to protect the principal structures from erosion for the reasonable economic life of the project (a minimum of 100 years per City policy). Under this approach, obviously, future erosion of the setback area (including even undercutting and large block failure) is to be expected.

Shoreline protective devices

LUP Policy S-6 of the City of Pismo Beach LCP addresses the use of shoreline protective devices:

S-6 (Shoreline Protective Devices). *Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion. If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply...maintain public access...shall minimize alteration of natural landforms...and shall be constructed to minimize visual impacts.*

This LUP policy reflects, and indeed incorporates, Section 30235 of the Coastal Act:

30235: *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

LUP Policy S-6 is reiterated almost verbatim by IP Section 18.16.100, which states in applicable part as follows:

18.16.100 (Bluff Protection). ... *Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted when necessary to protect existing structures, coastal dependent uses, and public beaches in danger of erosion, and must be the least environmentally damaging alternative that is feasible. Devices must be designed to*



eliminate or mitigate adverse impacts on local shoreline sand supply. Design and construction of protective devices shall respect to the degree possible natural landforms, and shall be constructed to minimize visual impacts.

This IP section likewise mirrors IP Section 17.078.060 (Shoreline Protection Criteria and Standards) which states in part:

17.078.060 (Shoreline Protection Criteria and Standards). ... *Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve coastal dependent uses and that may alter natural shoreline process shall not be permitted unless the City has determined that when designed and sited, the project will: (a) eliminate or mitigate impacts on local shoreline sand supply; (b) provide lateral beach access; (c) avoid significant rocky points and intertidal or subtidal areas; and (d) enhance public recreational activities. ...*

Public Access and Recreation

The project is located between the first public road and the sea. As such, the project must be consistent not only with the certified LCP but also the access and recreation policies of the Coastal Act. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. This includes protecting public visual access as well. In particular:

30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas such as the beach and surfing area below the Cliffs Hotel. Section 30240(b) states:



30240(b): *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These Coastal Act policies are generally reinforced by City LCP policies, including primarily policies in the LUP Land Use (LU) and Parks and Recreation (PR) elements. They are also complimented by the LUP and IP requirements to protect public access when considering setbacks and shoreline protective structures as cited above. In addition, the subject property is also located within the Open Space (OS-2) Overlay Zone (whose “purpose is to ensure that adequate public access and recreational activities are provided and that sensitive ecological or scenic areas are protected”) and the Coastal Access (AC) Overlay Zone within which specific standards for access apply. LUP Policies PR-23 and PR-33 state in applicable part:

PR-23 (Lateral Bluff-Top Open Space and Access Required). *...Development of structures shall be prohibited within the [blufftop public access and geologic hazard setback] zone, except for public amenities such as walkways, benches, and vertical beach access stairs. ...*

PR-33 (Permitted Development in Blufftop Access Areas). *Development permitted in the areas reserved for public access or recreation shall be limited to structures and facilities designed to accommodate recreational use of the area, including but not limited to stairways, benches, tables, refuse containers, bicycle racks, public parking facilities, seawalls, groins, etc. In no case shall any development except public access paths and access facilities and public stairways be permitted within the bluff retreat setbacks identified in the site specific geologic studies.*

IP Chapter 17.066 defines the Coastal Access (AC) overlay zone. Applicable sections of the Coastal Access IP Chapter include its purpose (IP Section 17.066.010) and its required standards (IP Section 17.066.020) and include:

17.066.010 (Purpose of [Coastal Access Overlay] Zone). *The Coastal Access (AC) Overlay Zone is intended to carry out the requirements of Section 4 of Article X of the California Constitution to ensure the public’s right to gain access from the nearest public roadway to the shoreline*

17.066.020 (Criteria and Standards [of the Coastal Access Overlay Zone]). *...Development permitted in the areas specific in the Local Coastal Program Land Use Plan for public beach access or recreation shall be limited to structures and facilities designed to accommodate passive recreational use of the area, including but not limited to stairways, benches, tables, refuse containers, bicycle racks and public parking facilities. In no case shall any development except public access paths and public stairways be permitted within the bluff retreat setbacks identified in site specific geologic studies.*

Protection of viewsheds is also elaborated by LUP Principal P-7 which states in part:



Principal P-7 (Visual Quality is Important). *The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. ...*

Policy Summary

In sum, the applicable LCP and Coastal Act policies require that development be sufficiently set back away from bluff edges so as to allow for natural erosion to take place without threatening the development, and without reliance on shoreline armoring. These policies require that the setback area be preserved for conservation and public access purposes; other development is prohibited in these areas. The coastal public viewshed must be protected and enhanced. All existing public access areas (such as that found on the blufftop, beach, and ocean waters seaward of the Cliffs Hotel) are protected, and uses or development in these areas that are incompatible with the primary purpose of providing for public access and recreation are not allowed.

2. Consistency Analysis

The proposed amendment can be broken down into the following functional elements: revetment removal; sewage holding tank removal and lift station relocation; sewer line relocation; public access pathway and blufftop runoff control; fire lane; action line; Facility Relocation Plan; assumption of risk; and existing property restrictions. Each of these is discussed separately below.

Revetment Removal

The removal of the revetment is clearly consistent with the Commission's directions for this site, and is likewise consistent with the applicable LCP and Coastal Act policies. By removing the revetment and restoring the beach and bluff to their pre-revetment installation condition, all of the following can be realized: (1) the beach area currently occupied by the revetment will be returned to public use, both direct recreational use as well as space for lateral pedestrian access, particularly at higher tides, along the pocket beach currently covered by rock; (2) the potential migration of rock(s) seaward on the beach and into the intertidal zone where they could become a public access and public safety impediment can be eliminated; (3) any negative impacts from the existing revetment on the offshore surfing areas (due to altered shoreline dynamics, wave refraction, and a reduced exit/entry point on the beach) will be eliminated; (4) the natural landform will be returned; and (5) the blemish in the public viewshed will be removed. In addition, the ongoing impacts to shoreline sand supply and overall beach retention from the revetment (due to its fixing the back beach location, retaining potential beach materials, contributing to beach scour, potentially altering the longshore transport of materials, and contributing to erosion and steepening of the shore profile) will be eliminated, thus protecting beaches, tidelands, and the public trust.

The Applicant has proposed a straight-forward revetment removal plan that has been evaluated and endorsed by their consulting engineering geologist.¹⁹ Aside from the inherent dangers of developing along the immediate shoreline here (and the corresponding need for the Applicant to assume the responsibility

¹⁹ GeoSolutions Inc, Richard Pfost, Senior Engineering Geologist. See also "Assumption of Risk" section that follows.



for such risks²⁰), the proposed revetment removal can be found consistent with the applicable policies cited above.

That said, there are some general timing considerations with the removal because of the desire to avoid potential complications of work taking place during inclement weather, given the oncoming winter rainy/storm season. The Applicant indicates that it will take roughly 4 weeks to remove the rock, and 2 additional weeks to repair the blufftop. So as to provide the most stable blufftop surface from which to work from the top, the blufftop area will be dewatered (i.e., irrigation activities suspended) in advance of the removal work. The Applicant indicates that the blufftop will be dewatered in advance of the Commission hearing so as to be ready to proceed immediately should the Commission approve the revetment removal. The Applicant likewise indicates that there appears to be a window of opportunity to complete the job this year before winter rains commence in earnest, and that they are committed to doing so if at all possible. However, there is the possibility that the job will be interrupted and/or will not be able to commence this year due to bad weather. Should that be the case, the removal would need to be postponed until after the rainy season, and potentially to following the summer tourist season.

The Commission would like the revetment removed as soon as possible, beginning in November 2001 weather permitting. However, the Commission is also cognizant of the special timing issues given the late date in terms of the approaching winter storm season. To ensure that the revetment is timely removed, this approval is conditioned for removal as soon as possible, and in no case later than October 1, 2002 (see special condition 1). Such a deadline will allow the Applicant flexibility to adjust the schedule as necessary to address winter storm concerns, and will ensure that the revetment is ultimately removed.

All the same, the Commission notes that the subject revetment has been in place for over 4 years and the public has borne the burden of its negative impacts for that long.²¹ If it remains in place another 6 to 9 months, the impacts and burden on public resources will only increase. The impacts of the revetment being in place, however, are not before the Commission at this time. Rather, the revetment impacts being evaluated here relate narrowly to the removal activities that are currently proposed.

Impacts associated with the revetment removal (and the blufftop sewage lift station and holding tank removal) are that the public would be barred from using the blufftop seaward of the Hotel, and would be barred from using the beach below the Hotel, for a period of roughly 6 weeks when construction is taking place. The public viewshed would be disrupted during this 6 week time frame as well. In addition, and as discussed in subsequent sections, there is a likelihood that debris from the structures abandoned in the blufftop may fall to the beach and thus disrupt beach access. Furthermore, such structures that “daylight” in the bluff, remaining protrusions until falling to the beach, will likewise contribute to public viewshed degradation.

To address these impacts from the project, some form of mitigation is necessary. The State Coastal Conservancy is currently working with the City of Pismo Beach to more fully develop the northern Pismo

²⁰ Again, see “Assumption of Risk” section below.

²¹ See above discussion of the permitting decisions here, including the Commission’s denial of the revetment in 1998 pursuant to CDP amendment number 4-83-490-A1 and appeal number A-3- PSB-98-049.



Beach bluffs with a connected blufftop trail system as directed by the LCP. This trail system already exists at several locations, including the component of the system represented by the blufftop area in front of the Cliffs Hotel. The lateral upcoast connection is, however, blocked at current time by the arroyo north of the Hotel. The City and Conservancy have developed a preliminary plan that would connect the existing beach trail and stairway (required as part of the original Cliffs Hotel approval and located along the arroyo immediately north of the Hotel) to the upcoast property by means of a stairway connected to the existing Cliffs Hotel stairway; informal access already takes place in this area.²² Such a plan would require agreements from the Applicant because the connecting stairway segment would be placed partially on the Applicant's property located on the northern side of the arroyo. Formalizing an agreement from the Applicant would be an appropriate mitigation tool in this case inasmuch as the impacts to be borne by the public from the project will diminish public access and the new stairway would enhance public access. The area in which the connecting trail segment would be placed is along the steeply sloping side of the arroyo (the opposite side of the arroyo from the Cliffs Hotel) nearest the ocean. This steeply sloping area does not appear to be useful to the Applicant for any other purpose. A new upcoast connection at this location would likewise increase the ability of Cliffs Hotel patrons to maneuver upcoast, correspondingly increasing the desirability of a stay at the Cliffs. In addition, such connection was contemplated by the Commission, and agreed to by the Permittee at that time (and by extension the current Applicant when they acquired the property), when the Cliffs Hotel was originally permitted. Special Condition 1 of 4-83-490 states in applicable part:

The plans [for the construction of the public access pathways seaward of the Hotel and from Shell Beach Road to the beach] shall specifically provide means for connecting the access paths on the subject property to any accessways that may be created on adjacent properties, and the applicant, by accepting the terms and conditions of the permit, shall agree to connect these accessways at the earliest possible time.

This approval is therefore conditioned for the Applicant to offer to dedicate (OTD) a public access easement over the proposed stairway location (see special condition 7 and exhibit H).

Sewage Holding Tank Removal and Lift Station Relocation

The proposed removal of the abandoned sewage holding tank and the relocation of the sewer lift station to a location inland of the blufftop setback area are consistent with the Commission's previous direction and the applicable policies cited above. By removing the sewage holding tank and restoring the bluff in that location, a potential contributor to bluff instability is eliminated, as is any chance that the sewage holding tank will become a hindrance to public access in the future inconsistent with LCP policies and underlying property restrictions applicable to the blufftop. Furthermore, by removing the holding tank now in a controlled manner as opposed to waiting until the abandoned tank must be removed for safety purposes (e.g., if the structure daylight during a winter storm), the integrity of the bluff is better protected. As with the revetment, the Applicant has proposed a straight-forward holding tank removal and void-filling plan

²² Note that a subdivision application has been filed for the property adjacent to the Cliffs Hotel on the upcoast (north) side of the Cliffs property. It is presumed that the City will require a lateral blufftop easement on this upcoast property (as required by the LCP) and that the City may require the subdividers to contribute funds towards the construction of the stairs. See exhibit H for the location of the proposed connecting stairway segment.



that has been evaluated and endorsed by their consulting engineering geologist.²³ Aside from the inherent dangers of developing along the immediate shoreline here (and the corresponding need for the Applicant to assume the responsibility for such risks²⁴), the proposed holding tank removal and void-filling plan can be found consistent with the applicable policies cited above.

The sewage lift station relocation would move the sewer lift station outside of the blufftop setback area to an inland location under the parking lot, roughly 90 feet inland of the existing bluff edge, and roughly even with the line of setback of the Cliffs Hotel (see exhibits B and G). At the currently estimated rate of bluff erosion of 6 to 32 inches in the southern portion of the bluffs, the lift station would not be reached by bluff erosion for roughly 34 to 180 years.²⁵ Since the LCP requires 100 year setbacks, this placement is technically inconsistent with the LCP since it could potentially be threatened in the next 30 years or so, possibly leading to further shoreline armoring requests. However, the relocated lift station would be placed in an area just inland of the setback currently maintained by the Cliffs Hotel structures themselves (i.e., inland of the originally required setback). So while these structures could be threatened some time in the next thirty years (depending upon actual erosion), they should not be threatened before such time as the Cliffs Hotel itself were threatened. It would be at that time and within that context that decisions on whether shoreline armoring at this location was required to protect principal structures in danger from erosion. Nevertheless, to ensure that coastal resources are not threatened by impacts from armoring identified to protect the lift station, and to ensure that the objectives of the LCP are not compromised, this approval is conditioned to have the Applicant stipulate that shoreline armoring will not be pursued in the future to protect the lift station (see special conditions 2 and 6). In any case, and as with the other development here, the responsibility for the inherent dangers of developing along the immediate shoreline here must be assumed by the Applicant.²⁶

Sewer Line Relocation

As described in the project description above, the sewer line currently in the blufftop would be relocated in the future as necessary to address continuing bluff retreat following revetment removal. As proposed, the existing sewer collection line in the blufftop would remain in place, continuing to gravity-collect sewage from the Cliffs Hotel. Approval for this component of the proposed project would represent after-the-fact approval since the sewer line is not to date permitted. A new roughly 50 foot segment of 8" pipe would be installed to connect this existing line to the relocated sewage lift station. Should the bluff retreat

²³ Again, GeoSolutions Inc, Richard Pfof, Senior Engineering Geologist. See also "Assumption of Risk" section that follows.

²⁴ Again, see also "Assumption of Risk" section below.

²⁵ The Applicant's consulting geotechnical engineers (GeoSolutions Inc, Richard Pfof, Senior Engineering Geologist) estimate current rates at 1 to 3 inches in the northern portion of the site and 6 to 32 inches in the southern and more unstable portion of the site (see exhibit D, exhibits pages 35 through 43). As noted when the revetment was last denied by the Commission at this location (4-83-490-A1 and A-3-PSB-98-049), bluff retreat rates can be difficult to accurately predict. Case in point, the currently estimated rate of erosion at the Cliffs Hotel is the fourth different retreat rate used by the Cliffs Hotel in as many applications before the Commission. The first application (for the hotel complex itself approved in October of 1983) based setback distances upon a 3-inch per year rate. When the Commission then denied a revetment project in December of 1996 (A-3-PSB-96-100, as previously described), the consulting geotechnical engineers at that time estimated the bluff retreat rate at the site as ranging from 4.5 inches (northern section) to 13 inches (southern section) per year based upon a four decade time frame (i.e., from 1955 to 1996). In the third application, when the revetment was last denied in 1998, the consulting geotechnical engineers at that time estimated a bluff retreat rate of 4 feet (or 48 inches) per year.

²⁶ See "assumption of risk" section below.



to within 6 feet of the existing sewer collection line in the blufftop, a new sewer collection line would be installed at a location roughly 15 feet seaward of the Cliffs Hotel in the blufftop. At that time, use of the existing line would be discontinued and the line and all associated apparatus would be abandoned in place.

As proposed, the Applicant indicates that the proposed future sewer collection line location is as close to the Hotel as the lines can physically be placed without compromising the Hotel (from the line trenching necessary).

To avoid placing any relocated sewer line in the required blufftop setback area, the Applicant considered an alternative of locating such sewer collection lines inland of the Hotel itself. However, such an option would require substantial excavation underground the Cliffs Hotel structure itself, as well as additional lift station(s) under the hotel. Such an option would be extremely costly and potentially detrimental to the structural stability of the bluff and the Cliffs Hotel itself. See Applicants submittal on this point attached as exhibit F.

Should the new sewer collection line be installed in the future as proposed (and the existing line abandoned), the new sewer line location would likely be threatened by bluff erosion prior to the Cliffs Hotel itself because it would be placed roughly 15 feet seaward of the Hotel. At the Applicant's estimated rates of erosion, bluff retreat could reach portions of such relocated lines within 20 years or so.²⁷

Note that the LCP and the underlying geologic hazard deed restriction prohibit the placement of sewer lines, whether the after-the-fact recognition of the existing line or its proposed future location, in the geologic hazard setback area. The LCP requires a minimum 100 year setback to, among other things, negate the need for future shoreline armoring. The sewer lines as proposed are inconsistent with these policies and property restrictions. Thus, a judgement call must be made: either the lines are allowed in the blufftop notwithstanding these requirements, or all such lines are placed inland of the setback area. Based on the Applicant's analysis of removing such lines from the setback area altogether, it appears that this choice may be infeasible if the Cliffs Hotel is to remain in operation; both in terms of the costs and technical difficulties as well as the potential impacts to the site and structural stability from excavation under such a large structure.

Thus if the Cliffs Hotel is to remain viable at the current time, it appears that such sewer lines will need to be allowed in the setback area. Of course such a choice is predicated on the fact that there is currently space available in the blufftop within which to install and operate such lines. Should such choice be presented in the future, and there not be adequate blufftop space within which to place and/or operate such lines, they would necessarily need to be relocated inland where physical space existing for them irregardless to the technical difficulties that would need to be overcome at that time. Therefore, if the lines are to be placed into the setback area, their placement must be considered temporary. In addition, the underlying property restrictions would need to be amended to account for this. In terms of the LCP prohibitions, these policies do not include any exception criteria. Thus, the Commission would need to

²⁷ For the northern bluffs (estimated by the Applicant as a 1" to 3" per year bluff retreat rate), the range is from 280 to 840 years. For the southern bluffs (estimated by the Applicant as a 6" to 32" per year bluff retreat rate), the range is from 22 to 120 years.



broadly interpret the intent of the applicable LCP policies that are intended to (a) avoid development incompatible with public access use, and (b) avoid the need for shoreline armoring. Since the sewer lines would be underground, they are not likely to affect ongoing public access use of the blufftop. If and when such lines daylight in the bluff and/or fall to the beach, then they would negatively impact public access and public access views. However, immediate removal of such daylighting structures and/or debris on the beach could address this issue. The only way that the sewer lines in the blufftop could be considered consistent with LCP policies requiring minimum 100 year setbacks is to ensure that such structures are not themselves used to justify shoreline armoring (that brings with it its attendant negative coastal resource and public access impacts) when these lines may be threatened in the future. Of course, lacking any exception criteria themselves, a variance would be required to allow the placement of the lines in the blufftop area.²⁸

Thus, as with the lift station, to ensure that coastal resources are not threatened by impacts from armoring identified to protect the sewer collection lines, and to ensure that the objectives of the LCP are not compromised, this approval is conditioned to have the Applicant stipulate that shoreline armoring will not be pursued in the future to protect the sewer lines (see special conditions 2 and 6).²⁹ To ensure that any abandoned sewer collection lines that daylight and/or fall to the beach do not adversely affect public access, the Applicant must commit to retrieval of any debris that falls to the beach below, and/or removal of any segments of pipe that daylight in the bluff face and represent a public viewshed blight or public safety nuisance (see special conditions 2 and 6). The geologic hazard deed restriction must be amended to allow such lines in the blufftop (see special conditions 4 and 6). In any case, and as with the other development here, the responsibility for the inherent dangers of developing along the immediate shoreline here must be assumed by the Applicant (see special conditions 3 and 6).³⁰

Public Access Pathway and Blufftop Runoff Control

The control of runoff and subsurface drainage is critical for maintaining the stability of this site, particularly the upper terrace deposit half of the bluff. The Applicant proposes a comprehensive solution including a series of dewatering wells, a shallow drain system under landscaped areas, subsurface moisture sensors, a swale (incorporated into the blufftop pathway) draining to the existing storm drain line, drought tolerant native plantings seaward of the pathway, and a 'no-plant' zone at the immediate bluff edge. Most of these elements describe the dewatering elements permitted by the Commission in 1998 (e.g., the pathway swale to storm drain, the moisture sensors, native plantings, etc). There are three exceptions. First, the shallow drain system is proposed in lieu of the geomembrane required in CDP amendment 4-83-490-A1. This change is proposed because the shallow drain system would be more effective method of controlling subsurface water than would be a geomembrane system, according to the Applicant's consulting geotechnical engineers. Second, the Commission approved 3 dewatering wells in 1998 and there are currently 10 existing in the blufftop. Thus, 7 of these are for after-the-fact recognition. And third,

²⁸ See "Variance Required" finding that follows.

²⁹ Since the sewer lines are not to be used to justify future shoreline armoring requests and must be considered temporary, it would appear prudent for the Applicant to develop a contingency plan to address sewage collection in the event such lines are made unstable by future erosion. Such a contingency plan may entail alternatives thus far evaluated by the Applicant or other alternatives not yet identified.

³⁰ See "Assumption of Risk" section below.



the proposal is for the phased relocation of these structures inland as future erosion dictates.

Other than the pathway/swale that simultaneously provides for public access and drainage, and similar to the sewer line discussion previous, all other such drainage structures in the blufftop are prohibited by the LCP (i.e., not allowed in the geologic hazard setback area, not allowed if not setback a sufficient distance to allow a minimum of 100 years of erosion and to negate the need for future shoreline armoring) and not allowed by the underlying blufftop geologic hazard property restrictions. Again, as with the sewer collection lines, to allow such structures, the Commission must broadly interpret LCP intent. The drainage measures proposed should help to stabilize the bluff, helping to avoid the need for shoreline armoring. Such measures are predominantly subsurface (other than the path/swale and runoff collection points) and shouldn't impact ongoing public access (other than, as with the sewer line, when any such abandoned components eventually daylight and/or fall to the beach below). Provided such structures are not themselves used to justify armoring, are removed if they daylight and cause a public safety nuisance or visual blight, are disposed of properly should they fall to the beach, and the geologic hazard deed restriction is amended to allow these structures, then the Commission can find them consistent with LCP intent. In other words, such structures must be considered temporary in nature.

Accordingly, this approval is conditioned to have the Applicant stipulate that shoreline armoring will not be pursued in the future to protect the drainage and runoff control developments nor the pathway in the blufftop,³¹ and any such development that falls to the beach below and/or daylights in the bluff face will be removed (see special conditions 2 and 6). The geologic hazard deed restriction must be amended to allow such structures in the blufftop (see special conditions 4 and 6). In any case, and as with the other development here, the responsibility for the inherent dangers of developing along the immediate shoreline here must be assumed by the Applicant (see special conditions 3 and 6).³²

Fire Lane

The Applicant proposes a "Fire Department Emergency Access" on the blufftop seaward of the hotel. This emergency access area is shown as a 24-foot wide "Fire Lane" with a 60-foot long hammerhead (for turning around large vehicles) on the submitted plans. The Applicant has included a letter from the Pismo Beach Fire Department indicating that such emergency vehicular access west of the Hotel is necessary and would meet the Fire Department's requirements (see exhibit D on exhibits page 47). According to the Applicant, the proposed fire lane would not involve any physical development (such as paving or other demarcation), but rather represents a space that would be reserved for this use.

No evidence has been identified that shows that the Commission ever contemplated emergency access on the seaward side of the Hotel when the Hotel was originally permitted in 1983. In fact, as previously discussed, the area seaward of the Hotel was given over to a geologic setback that was meant to erode over time; hardly an area appropriate for any type of required access. In addition, the LCP does not

³¹ Note that in terms of ensuring public access, the entire blufftop area is deed restricted for this purpose. As such, while the concrete blufftop path at the Cliffs Hotel (and/or a relocated path inland as proposed should bluff retreat warrant) certainly facilitates public access, it is not critical to ensuring public access. As long as any blufftop remains in front of the Cliffs Hotel, this area is restricted to public access uses by the underlying property restrictions.

³² See "Assumption of Risk" section below.



include any such emergency access requirements. To better understand the Pismo Beach Fire Department position on the proposed “Fire Lane” in light of their letter submitted by the Applicant, Commission staff communicated with the Fire Department personnel responsible for such matters. Notwithstanding the letter submitted on their behalf by the Applicant, the Pismo Beach Fire Department indicates that while the blufftop area could be used for emergency response, they would not take emergency response vehicles onto the blufftop as it is too dangerous an area for such vehicles. Rather, the Pismo Beach Fire Department indicates that the blufftop might be used to transport ladders by foot to the seaward side of the hotel if necessary for emergency purposes. As long as space was available to walk on the seaward side of the Hotel, space would be available for emergency response. There is also an open corridor through the center of the Hotel (i.e., between the Hotel and Restaurant structures) leading from the inland parking lot to the blufftop that could be used for the same purpose.

The Commission is concerned that, similar to the physical developments proposed for the blufftop, the conceptual fire lane could be used as future justification by the Applicant for shoreline armoring. At the Applicant’s estimated rates of erosion, bluff retreat could reach the southern portion of the conceptual fire lane within 13 years or so; the northern portion of the site is not expected to erode as quickly and the proposed conceptual fire lane would not be expected to be reached by bluff retreat for several hundred years.³³

As with the physical developments proposed in the blufftop (i.e., sewer lines and drainage apparatus), a fire lane is not allowed in the LCP-required blufftop setback area, it is not allowed by the underlying property restrictions, and it would not be set back a sufficient distance from the bluff to provide a 100 year setback and would thus not negate the need for future shoreline armoring. As a result, it would be inconsistent with the LCP and the underlying property restrictions. Further, as indicated by the Pismo Beach Fire Department, the blufftop seaward of the Cliffs Hotel would not be used for vehicles regardless. Rather, it would be used for foot transport of ladders, if at all. There is no need to designate such an area as a “Fire Lane” (or any other name) to confer this status on the area. The blufftop is, de facto, an emergency access area. The same could be said for the courtyard, the pathway running along the northern side of the Hotel, the parking lot, and indeed any area surrounding the Hotel. To ensure that the “Fire Lane” or its equivalent is not used to justify shoreline armoring requests (armoring that would bring with it its attendant negative coastal resource impacts), and although it can be indicated that the blufftop may be used for emergency access (as it de facto is now), revised plans must be submitted that remove the “Fire Lane” designation from the blufftop area (see special condition 8). Only in this way can it be guaranteed that a conceptual designation – a fire lane – will not be used for shoreline armoring justification and will not be inconsistent with the LCP and the underlying property restrictions.

Action Line

The Applicant proposes a conceptual “Action Line” corresponding to a line on the blufftop which, should the bluff retreat to this pre-determined point, “it becomes necessary to initiate measures to arrest continued

³³ For the northern bluffs (estimated by the Applicant as a 1” to 3” per year bluff retreat rate), the range is from 240 to 720 years. For the southern bluffs (estimated by the Applicant as a 6” to 32” per year bluff retreat rate), the range is from 13 to 70 years.



bluff erosion.”³⁴ The Action Line was calculated by the Applicant’s consulting geotechnical engineers based upon the location of the aforementioned proposed “Fire Lane” and the amount of bluff that would need to remain in order to support truck loading in the “Fire Lane” area. The Applicant estimates that the Action Line would be reached by bluff erosion roughly 7.5 to 40 years from the time the revetment is removed.³⁵

The Applicant has clarified in several places (both in the submitted plan and by letter correspondence) that the Action Line is not the point when armoring is required, but rather the point at which it would need to be pursued. However, the proposed “facility relocation plan” is both unclear and internally inconsistent on this point.

It needs to be clear that the “Action Line,” either that proposed here or some variation thereof, enjoys no status under the Coastal Act nor the LCP. It is entirely within the Applicant’s rights to propose shoreline armoring whenever they believe it is necessary. Likewise, when that application is made, the City of Pismo Beach and the Coastal Commission need to evaluate that application in light of the policies of the certified LCP and the Coastal Act, and the existing property restrictions, and render appropriate decisions. The Commission notes that the Applicant is not here proposing shoreline armoring, and the Commission is not here evaluating if shoreline armoring is warranted; whether it be now or at some point in the future. It will be up to the Applicant to make their case for shoreline armoring when and if they believe it to be justified and appropriate under the applicable policies, and up to the City and the Commission to decide on that application at that time.

The Commission is concerned that, similar to the other physical and conceptual development being proposed for the blufftop, that the Action Line, if endorsed, could be used as justification for shoreline armoring in the future at this site. There is no mechanism under the Coastal Act nor the LCP for such a predisposition. Defining such an element within the geologic hazard setback area runs counter to the LCP prohibitions for this area, the underlying property restrictions, and the parameters of the original approval of the Hotel in 1983. Accordingly, because the Action Line enjoys no status, because it could be used as justification for shoreline armoring (that brings with it its attendant negative coastal resource impacts) in the future, because it was calculated based on the position of a “Fire Lane” that does not exist (and not based on the inland location of the Hotel – roughly 25 to 60 feet inland of the conceptual “Fire Lane” proposed), and because the Commission does not want to prejudice future decisions on any future applications at this site, revised plans must be submitted that eliminate reference to the “Action Line” (see special condition 8).

Facility Relocation Plan

As described in the project description, the Applicant’s proposed amendment submittal is incorporated into a “Facility Relocation Plan.” This Plan has its genesis in the Commission’s partial dewatering

³⁴ See submitted “facilities relocation plan.”

³⁵ The 7.5 to 40 year estimate based upon the Applicant’s estimated 6” to 32” inch bluff retreat rate for the southern portion of the site. The “Action Line” is roughly 20 feet from the blufftop edge at its closest point (in the southern portion of the site).



elements approval in 1998; an approval that required a “Facility Relocation Plan.”³⁶ However, the 1998 requirement was to apply only to those elements approved at that time with the intent being that the submitted plan would provide for the relocation and/or removal of the approved blufftop elements (i.e., pathway, drainage line, etc.) in advance of the retreat of the bluff. This was meant to avoid a situation where these blufftop dewatering elements being approved at that time themselves were used to justify shoreline armoring in the future. In other words, to stipulate that such blufftop development was temporary in nature and not to be used to justify armoring at any time.

The Applicant’s submittal substantially alters the intent and effect of the previously required Facility Relocation Plan premise. The submitted plan appears to more aptly be described as a plan defining locations for blufftop elements that cannot be altered and for which, ultimately, shoreline armoring will be necessary. Such intent is highlighted by the Fire Lane and Action Line concepts.

The submitted plan needlessly confuses the issues present at this location. If the Applicant wants to pursue shoreline armoring at this location, it needs to be clear that the only structure for which such armoring could even begin to be considered is the Cliffs Hotel itself. The Cliffs Hotel is the only principal structure on this site, all other development here is secondary to it. Even then, the Cliffs Hotel was originally permitted in 1983 with a blufftop setback that the Commission and the Applicant at that time determined to equate roughly to a 400 year setback; a setback deemed adequate for consistency with Coastal Act Section 30253 requirements that it not require shoreline armoring in the future.

Other than public access pathways, the LCP and the underlying property restrictions at this site prohibit development in the blufftop setback area seaward of the Cliffs Hotel. As such, allowing development within the setback area, such as the various utilities proposed as above discussed, can only be found consistent with the LCP when one takes a broad interpretation of the subject policies read together with the LCP objectives for the blufftop (namely that it be protected exclusively for public access uses and development). To even begin to assert that such non-access development in the blufftop could be used to justify future shoreline armoring, armoring for which negative impacts to public access would be expected, for which the underlying property restrictions do not currently allow, and for which the Coastal Act may not allow, is contrary to the LCP and the existing requirements here. As described above, the only way such blufftop development can be found consistent with the intent of the LCP and the applicable policies is to make sure that it is considered temporary and not used to justify armoring in the future. The facility relocation plan premise contradicts these requirements and confuses the core issues at the Cliffs Hotel site.

Accordingly, this approval is conditioned to delete the previous requirement for a Facility Relocation Plan. In its place, the Applicant will need to submit revised plans showing the locations for all facilities following the removal of the revetment, the removal of the sewage holding tank, and the relocation of the sewage lift station. Such plans must omit reference to “action lines,” “fire lanes,” or the landwardmost location for different structures. Previous blufftop landscaping and fencing requirements as amended

³⁶ Special condition 2 of CDP Amendment 4-83-490-A1. As noted before, the “Facility Relocation Plan” was required to be submitted within 60 days of the Commission’s action on the previous permit amendment request (i.e., it was to be submitted by January 4, 1999). The current submittal is the first such plan received notwithstanding this requirement.



should also be folded into the revised as-built plans for future ease of reference. To ensure that fencing does not block or otherwise disrupt public views inconsistent with the Coastal Act and LCP, fencing details must be provided. The revised as-built plans must indicate that all development in the blufftop seaward of the Cliffs Hotel will be relocated as necessary in response to bluff erosion, and cannot be used as justification for shoreline armoring proposals. See special conditions 2 and 6.

Assumption of Risk

The experience of the Commission in evaluating the consistency of proposed developments with Coastal Act policies regarding development in areas subject to problems associated with geologic instability, flood, wave, or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. Oceanfront development is susceptible to bluff retreat and erosion damage due to storm waves and storm surge conditions. Past occurrences statewide have resulted in public costs (through low interest loans and grants) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden on the people of the state for damages, the Commission has regularly required that Applicants acknowledge site geologic risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Such was the case when the Cliffs Hotel was originally permitted by the Commission in 1983.

In the case of the current proposal, there is some inherent risk associated with excavation of soils and rocks (i.e., the revetment) in a dynamic coastal bluff environment – an environment that the Applicants have acknowledged by deed restriction is “subject to extraordinary hazard from erosion and from bluff retreat.” Working on and around eroding bluffs is clearly a difficult undertaking.

During the 1998-99 revetment denial and subsequent reconsideration hearings, there was much discussion in front of the Commission over the method to be used to remove the revetment safely. The previous owners claimed at one time that the only way to remove the revetment safely was to excavate the blufftop to a 1:1 slope (i.e., to essentially remove the entire bluff seaward of the Hotel).³⁷ At that time, the Commission identified at least 3 options (and observed that there were likely many more) that could be pursued to remove the revetment without excavating the entire bluff. One option was to remove the revetment in the same way it was installed (by crane plucking rocks one-by-one); this is the method being pursued here in this application with the permutation that a support loader will be placed on the beach. A second option identified at that time was to combine support by a blufftop crane with a smaller pulley crane on the beach (at a safe distance from the bluff face) to pull the rocks onto the beach, one by one. Once on the beach, the rocks could be broken into smaller pieces and lifted to the bluff top for removal from the site. A third option, in the case a blufftop crane would destabilize the bluff (and decrease safety) avoided the blufftop area altogether. This option involved the use of very large industrial crane placed inland in the parking lot with a boom arm capable of making a 16,000 pound (8 ton) pick from up to 350 feet away.³⁸

³⁷ Reconsideration hearings for 4-83-490-A1-R and A-3-PSB-98-049-R.

³⁸ Such cranes were readily available to be used at the site at that time.



Likewise, there has been debate over the best method to safely address the abandoned sewage holding tank; namely, would be more protective of the bluff resources to leave the sewer holding tank in place and remove it in the future when and if it “daylights” in the bluff. The Applicant’s consulting geotechnical engineers indicate such removal in the future would be expected to exacerbate bluff erosion since it would likely take place during uncontrolled circumstances when the structure daylights. During such a time (for example, during a winter storm), removal of the tank could result in large-scale bluff failure. Removal of the tank now, when it can be done in a controlled manner and appropriately back-filled, would more be more protective of the restored natural bluff.

In any case, the Applicant’s consulting geotechnical engineers have endorsed the removal and restoration methods for the revetment, the sewage holding tank, and the sewage lift station. These methods appear arguably sound. This approval is conditioned to employ the removal and restoration methodology as endorsed and refined by the Applicant’s consulting geotechnical engineers (see special condition 1).

However, as evidenced by the existing deed restrictions, there are inherent risks with development on and around eroding bluffs; this applies to the removal/restoration episodes as well as for development landward of the bluffs themselves. The Applicant’s consulting geotechnical engineers have documented that the subject site is clearly subject to ongoing bluff erosion. They indicate that erosion should be expected to continue in the future, particularly following the removal of the revetment. As such, the site, and all development on it, is likely to be affected by shoreline erosion in the future.

Although the Commission has sought to minimize the risks associated with the development proposed in this application, the risks cannot be eliminated entirely. Given that the Applicant has chosen to pursue the development despite these risks, the Applicant must assume these risks. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this precarious blufftop location (see special conditions 3 and 6). Specifically, special conditions 3 and 6 together require the Applicant to record a deed restriction that evidences their acknowledgment of the risks and that indemnifies the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit amendment.

Existing Property Restrictions

In order to allow any development in the blufftop other than public access pathways and stairways, the existing geologic hazard deed restriction must be amended to allow for such development. In this case, the proposed project includes major subsurface drainage and sewer utilities in the blufftop. Since this blufftop setback area and the implementing deed restriction were meant to allow for continued natural shoreline erosion in the setback so as to avoid the need for shoreline armoring, the only way that such a change could be allowed would be if it were clear that any such non-public access development in the blufftop were not to be used to justify future shoreline armoring at this site. In other words, all development seaward of the Cliffs Hotel in the blufftop must be considered temporary and relocatable in the event of bluff retreat threatening such development. Only in this way can the setback function as envisioned and the decisions regarding shoreline armoring at this site evaluated without prejudice. Therefore, special condition 4 includes the requirement that the existing geologic hazard deed restriction be so amended.



In addition, there is potential confusion because there are actually four separate existing deed restrictions, two each for public access and geologic hazards.³⁹ The reason for this is because there were two properties at the time the Commission approved the Cliffs Hotel in 1983 and the deed restrictions were recorded. The two properties have since been combined into one parcel (APN 010-041-044). In any case, the respective property restrictions (e.g., for access and geologic hazards) are the same between the applicable deed restrictions. The only difference is that each refers to a different area which, when combined, reflects the current parcel boundaries. To avoid such confusion, the existing deed restrictions need to be re-recorded based on the current parcel lines. Other than the change to the geologic hazards restriction identified, the existing property restrictions would remain unchanged. For ease of future reference, all property restrictions need to be shown on a combined graphic clearly delineating and identifying the particular requirements of each recorded restriction applicable to the property (see special conditions 4, 5, and 6).

Variance Required

As described in the findings above, the LCP prohibits placement of non-public access structures in the blufftop setback area. The LCP allows for a variance from the strict application of this requirement. LCP IP Sections 17.121.030 and 17.121.040 state as follows:

17.121.030 (Variances). *Variances from the structural developments standards of this Ordinance for any zone may be granted by the Planning Commission when unusual hardships arise from the strict application of said standards applicable to a property. Variances may only be granted when all of the following circumstances are found to apply by the Planning Commission:*

- 1. That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is situated.;*
- 2. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive subject property of development potentials available to other properties in the vicinity and under identical current zone classifications; and*
- 3. The special circumstances affecting the subject property are unique to the site and do not apply equally to other lots in the vicinity under identical zone classifications.*

17.121.030 (Non-Allowable Variances).

- 1. The use of lands or buildings not in conformity with the regulations specified for the district in which such lands or buildings are located may not be allowed by the granting of a variance from the strict application of the terms of this Ordinance.*

³⁹ See also earlier section on Existing Deed Restrictions.



2. *Similar existing, nonconforming or illegal situations in the vicinity of a property are not evidence that would justify a variance in that the standards of the current zoning ordinance apply equally to conforming, nonconforming or illegal situations.*
3. *Variances proposed as a result of hardships that are self-imposed may not be allowed.*
4. *Density variances other than as provided in the adopted Housing Element portion of the General Plan/ Local Coastal Program Land Use Plan.*

In this case, the Commission is broadly interpreting the intent of the applicable LCP policies that are intended to (a) avoid development incompatible with public access use, and (b) avoid the need for shoreline armoring. Since the non-public access structures proposed here would be placed underground, they are not likely to affect ongoing public access use of the blufftop. If and when such non-public access structures in the blufftop were to daylight in the bluff and/or fall to the beach, then they would negatively impact public access and public access views. However, immediate removal of such daylighting structures and/or debris on the beach could address this issue. The only way that the non-public access structures in the blufftop could be considered consistent with LCP policies requiring 100 year setbacks is to ensure that such structures are not themselves used to justify shoreline armoring (that brings with it its attendant negative coastal resource and public access impacts) when these developments may be threatened in the future. The placement of such developments in the blufftop thus must be considered a temporary location from which they will be moved as future erosion dictates. Of course, and as detailed in the findings above, the responsibility for the inherent dangers of developing along the immediate shoreline here must be assumed by the Applicant. As detailed in the preceding findings, special conditions are included to address these issues.

With these conditions, the Commission makes each of the required variance findings, with the required special circumstance being that the Cliffs Hotel inland of the blufftop is already permitted, developed, and operational.

Coastal Act and LCP Consistency Conclusion

The Cliffs Hotel case history is symptomatic of any number of cases statewide in which coastal developers build along an eroding shoreline and then request shoreline protection when natural shoreline processes continue. The Coastal Act and LCP require developers to show that their development will not require the construction of protective devices. Developers, in turn, provide site specific geotechnical analyses to show that, in fact, their development is consistent with Coastal Act and/or LCP siting and setback policies and thus will not require shoreline protection in the future. In essence, the developer is making a commitment to the public (through the Commission, and its local government counterparts) that, in return for building their project, the public will not lose public beach access, sand supply, visual resources, and natural landforms, and that the public will not be held responsible for any future stability problems.

Such a commitment was made in this case in 1983. In addition, the developers knowingly and voluntarily entered into property restrictions in which they acknowledged the “extraordinary hazard from erosion and from bluff retreat” associated with building at this location and they assumed all responsibility for this



choice. As further evidence of the developers' assumption of risk, they further restricted the property to allow for only public access improvements seaward of the hotel. For better or worse, the Cliffs Hotel was developed with substantial utilities in the blufftop setback area. The LCP prohibits the placement of such development in the setback area, and the underlying property restrictions only allow for public access improvements in this area. Although the current Applicant was not the original Cliffs Hotel developer, the current Applicant knowingly and voluntarily accepted the property restrictions and the unresolved matter of the revetment and the unpermitted blufftop developments when the property was purchased.

The Applicant now proposes to resolve the most obvious unresolved problem at the site by removing the revetment. In addition, the Applicant now proposes to remove and/or relocate outside of the blufftop setback the most problematic of the unpermitted development present there (the sewage holding tank and the lift station). However, these straight-forward portions of the current proposal are not without their entanglements since they are entwined with requests to retain substantive non-public access development in the blufftop, and to define through a complicated plan conceptual and physical development that could be used to prejudice future shoreline armoring decisions regarding this site in the future. Because of this, and because of the inherent dangers of development along a naturally eroding shoreline, this approval is conditioned to resolve issues and leave in its wake the clearest of physical facts when and if shoreline armoring is proposed in the future.

In sum, the removal of the revetment, the removal of the sewage holding tank, the removal of the sewage lift station, and the restoration of the bluff in a timely manner are consistent with the Coastal Act, the LCP, and the Commission's Cease and Desist and Restoration Orders applicable to the site. The remaining development proposed within the blufftop setback area (i.e., the sewer lines, drainage system, pathway, and landscaping) and the relocated inland sewage lift station can be found consistent with the applicable LCP policies only if it is clear that such development will not be used as justification for future shoreline armoring requests. If they have not already, the Applicant should develop appropriate contingency planning for a worst case scenario in which such blufftop development must be removed. Of particular importance in this context would appear to be the blufftop sewer collection lines, without which the Hotel would cease to function. Given ongoing erosion, it would appear prudent to have non-armoring response(s) identified for such a future potential event. Any and all debris from the blufftop that falls to the beach below (e.g., abandoned lines) and/or that daylight in the bluff and creates a public safety nuisance or visual blight must be retrieved and properly disposed. The blufftop may be used for emergency access, but the proposed conceptual "Fire Lane" area is not recognized. The conceptual "Action Line" enjoys no status under the Coastal Act nor the LCP and is not recognized. Impacts to public access from construction are to be mitigated by an easement for lateral access upcoast. The Applicant must assume all risks for developing in light of the known hazards present at this location.

Finally, LUP Policy S-6 only allows shoreline armoring to protect existing principal structures. The Commission has consistently interpreted Coastal Act Section 30235 to only apply to existing principal structures as well.⁴⁰ The only principal structure at the site is the Cliffs Hotel itself. However, since the

⁴⁰ The Commission must always consider the specifics of each individual project, but has found that existing accessory structures (such as patios, decks, gazebos, stairways, etc.) are not required to be protected under Section 30235 or can be protected from erosion by relocation or other means that do not involve shoreline armoring. The Commission has historically permitted at grade structures within the geologic



Hotel was approved in 1983 (post-Coastal Act effectiveness and prior to LCP certification) with a setback deemed adequate to negate the need for shoreline armoring (and was further deed restricted to assume the risks of erosion, to not allow for any development seaward of the Hotel that would impede public access, and to prohibit all development in the blufftop other than pathways and stairways), it is unresolved as to whether the Cliffs Hotel is a existing structure within the meaning of the Coastal Act and the LCP. Since the application here is not for shoreline armoring, these issues need not yet be resolved, but are critical context to understanding the development proposed, and the Commission's conditions.

Thus, and only as conditioned, can the Commission find the proposed project amendment consistent with the applicable LCP and Coastal Act policies cited in this finding.

3. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The City in this case exempted the proposed amendment under CEQA as a "minor alteration of an existing private facility." This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

G. Outstanding Condition Compliance

The Applicant is currently packaging materials to verify compliance with the CDP as amended for the Cliffs Hotel project (CDP 4-83-490 as amended by 4-83-490-A1). In addition to the proposed removal/relocation developments that are detailed in this report and that are partially considered compliance with previous conditions of approval, there are also distinct elements of condition compliance not addressed herein.⁴¹ All such condition compliance measures not addressed by this permit amendment

setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs.

⁴¹ Note that the submitted Facility Relocation Plan (see exhibit D) includes discussion of some of these elements.



are being addressed separately by Commission staff in their condition compliance role. Since the conditions of this approval replace and modify special conditions 2 and 3 of 4-83-490-A1, remaining outstanding condition compliance (not associated with this CDP amendment) is limited to (a) verification that at least 19 public access parking spaces are signed and available for general public use at the Cliff Hotel site, and (b) verification that official Coastal Access signs marking the blufftop area and the pathway from Shell Beach Road to the beach as public access areas is in place. The Applicant indicates that such measures have been put in place and will be providing materials to that effect soon.

